

GROOM LAW GROUP

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September 11, 2017

Hon. Leslie G. Foschio
United States Magistrate Judge
2 Niagara Square
Buffalo, New York 14202

Re: *New York State Teamsters Conference Pension and Retirement Fund v. Tops Markets, LLC, Erie Logistics, LLC and Teamsters Local 264*, No. 17-cv-00451-LJV-LGF (W.D.N.Y.)

Dear Judge Foschio:

We represent Interpleader-Plaintiffs New York State Teamsters Conference Pension and Retirement Fund and its Board of Trustees (collectively, the “Pension Fund”), in the above-captioned action, which Judge Vilardo referred to Your Honor on August 23, 2017, Dkt No. 26. We write to request: (i) clarification as to whether the oral arguments Judge Vilardo had previously scheduled for September 27, 2017, *see* Dkt Nos. 13 and 24, will still take place then;¹ and (ii) permission, pursuant to Local Rule 7(a)(6), to submit a sur-reply brief not to exceed 7 pages.

After Interpleader-Defendants Tops Markets, LLC and Erie Logistics, LLC (collectively, “Tops”) moved to dismiss the Pension Fund’s Complaint on the grounds that it was purportedly premised on “a fictional dispute between Teamsters Local 264 and [Tops],” Dkt No. 8-1 at 1, Local 264 filed a cross-claim against Tops, Dkt No. 14. The Pension Fund, believing that the cross-claim mooted Tops’ motion to dismiss, wrote to Tops and asked that the motion be withdrawn, or, in the alternative, that Tops explain the remaining basis for its motion. Dkt No. 22-1, Ex. A. Tops refused to withdraw its motion or offer any explanation regarding its position on the relevance of the cross-claim. *Id.*, Ex. B. Accordingly, the Pension Fund only learned of Tops’ position when it filed its reply brief on August 30, 2017, Dkt No. 27.²

After filing its reply brief, Tops responded to the Pension Fund’s latest attempt to resolve the matter by stating that the Pension Fund should direct its arguments “to the court, not to your

¹ We understand that counsel for Interpleader-Defendant Teamsters Local 264 (“Local 264”) faxed a letter to Judge Vilardo on September 1, 2017, seeking clarification as to the scope of Judge Vilardo’s referral. That letter, which has not been docketed, also noted that only two of the three motions pending in this case have been set for a briefing schedule and oral argument.

² In its reply, Tops argues that “Local 264’s crossclaim . . . further proves that the Interpleader Complaint fails to state a cause of action.” *Id.* at 6. Tops’ reply also raises a number of new arguments, and **18** of the **26** cases it cites were not even mentioned in *either* Tops’ original brief, Dkt No. 8, *or* the Pension Fund’s brief in opposition, Dkt No. 22.

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adversary,” and that the Pension Fund was “free to make [them] in the context of the litigation.”
9/1/2017 Letter from Benjamin Zuffranieri.

We note that the Pension Fund’s opposition brief, Dkt No. 22, was 11 pages under the limit set forth in the Local Rules. Thus, even with a 7 page sur-reply, the Pension Fund’s total briefing on Tops’ motion to dismiss will still be less than the limit set forth in the Local Rules (and 60% the length of Tops’ briefing). The Pension Fund proposes that the sur-reply brief be due one week after this Court’s order with respect to the sur-reply.

Respectfully submitted,

/s/ Edward J. Meehan

Edward J. Meehan

cc: All Counsel of Record (via ECF)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 11th day of September, 2017, the foregoing Letter was filed with the Clerk of Court via CM/ECF and served electronically upon:

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/s/ Edward J. Meehan
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